

AMENDED IN ASSEMBLY JULY 2, 1999

AMENDED IN SENATE APRIL 5, 1999

**SENATE BILL**

**No. 451**

**Introduced by Senator Schiff**

February 17, 1999

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~~An act to amend Section 6129 of, and to add Section 6129.5 to, An act to add Section 6129.5 to the Penal Code, relating to criminal conduct of public employees, and declaring the urgency thereof, to take effect immediately. employees.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 451, as amended, Schiff. Criminal conduct by public employees: investigations.

Existing law requires the office of the Inspector General, the Youth and Adult Correctional Agency, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms refer matters involving criminal conduct to the proper law enforcement authorities, and ~~that requires~~ the entity making a referral to the local district attorney *to* also notify the Attorney General. Existing law further ~~provides~~ *requires* that if the local district attorney refuses to accept the case, or has not acted on the matter, as specified, the matter ~~shall~~ be referred to the Attorney General, as specified.

This bill would, instead, ~~provide~~ *require* that upon the occurrence or discovery of ~~a major incident, as defined, the Department of Corrections supervisor is required to notify the department's Office of Internal Affairs, and that office in~~

~~turn is required to immediately notify the Attorney General. The bill also provides that the Attorney General has discretion to accept a criminal case involving a department employee, and that if the Attorney General elects not to investigate and prosecute the case, the local district attorney would investigate and, if appropriate, prosecute the case. By increasing local prosecution costs, the bill would impose a state-mandated local program.~~ *either a major incident as defined, or other criminal misconduct, committed by an employee or agent of the Department of Corrections in a department facility, a specified party at the scene immediately notify the department's Office of Internal Affairs. That office is then required to immediately notify the Attorney General as specified. In the case of a major incident, or pursuant to a memorandum of understanding vesting primary prosecutorial responsibility with the district attorney, the Office of Internal Affairs would be required to also immediately notify the local district attorney. The bill would authorize the Attorney General, upon receiving notice of a major incident within a department facility, to initiate an investigation to determine whether an employee or agent of the department may have engaged in or participated in a major incident. In addition, under the bill, the Attorney General would have discretion to assume responsibility for the investigation and prosecution of criminal cases involving major incidents, or in other criminal cases pursuant to a memorandum of understanding with a district attorney.*

*The bill would also require the department to provide to the prosecuting agency with primary prosecuting responsibilities all known facts and circumstances, within a specified time. The reports required by this section would be confidential and inadmissible in a criminal or civil proceeding except as specified.*

*This bill also declares that nothing in the provisions precludes the local District Attorney or other law enforcement entity from investigating or prosecuting matters not being investigated or prosecuted by the Attorney General. The bill also reorganizes without substantive change, certain provisions of existing law.*



~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~This bill would declare that its provisions would become effective immediately as an urgency statute.~~

Vote:  $\frac{2}{3}$ —majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ no.

*The people of the State of California do enact as follows:*

~~SECTION 1. Section 6129 of the Penal Code is~~

*SECTION 1. The Legislature finds and declares that nothing in this act is intended to interfere with or diminish the primary prosecutorial responsibilities of district attorneys now or in the future, except as specifically provided by this act.*

*SEC. 2. Section 6129.5 is added to the Penal Code, to read:*

*6129.5. (a) (1) Upon the occurrence or discovery of a major incident within a facility of the Department of Corrections, the supervisor or other responsible party who is present at the scene shall immediately notify the department's Office of Internal Affairs. Upon receiving that notification, the Office of Internal Affairs shall immediately notify the local district attorney and the Attorney General. The notice required by this paragraph shall be given regardless of whether a local district attorney has also been notified of the circumstances or allegations.*

*(2) Upon the discovery of circumstances or allegations suggesting that an employee or agent of the department may have engaged in or participated in criminal misconduct, the supervisor who is present at the scene shall immediately notify the Office of Internal Affairs. Upon receiving that notification, the Office of Internal Affairs shall immediately notify the Attorney General. If a memorandum of understanding vests primary*

1 prosecutorial responsibility with the district attorney, the  
2 notification provided by the Office of Internal Affairs to  
3 the Attorney General shall also be provided to the district  
4 attorney.

5 (3) As used in this section, major incidents include, but  
6 are not limited to, any of the following:

7 (A) Use of deadly force, or any use of force resulting  
8 in death or great bodily injury as defined in subdivision  
9 (e) of Section 12022.7.

10 (B) Suicide or attempted suicide.

11 (C) Unattended death.

12 (D) Allegation of sexual assault.

13 (4) Nothing in this subdivision shall preclude any  
14 district attorney or sheriff from investigating any incident  
15 within a facility of the department.

16 (b) Upon receiving notification of a major incident  
17 within a facility of the department, the Attorney General  
18 may initiate an investigation by the Department of  
19 Justice for the purpose of determining whether an  
20 employee or agent of the Department of Corrections may  
21 have engaged in or participated in a major incident.

22 (c) (1) After conducting an investigation pursuant to  
23 subdivision (b), the Attorney General shall have  
24 discretion to elect whether to assume responsibility for  
25 the investigation and prosecution of criminal cases  
26 involving employees or agents of the department that  
27 occur in facilities of the department or are related to  
28 conduct that is intended to or does occur in facilities of the  
29 department, subject to any limitations set forth in any  
30 memorandum of understanding entered into between  
31 the Attorney General and a district attorney. If a  
32 memorandum of understanding vests primary  
33 prosecutorial responsibility with the district attorney, the  
34 notification provided by the Office of Internal Affairs to  
35 the Attorney General shall also be provided to the district  
36 attorney.

37 (2) Upon independent discovery by the Attorney  
38 General or notification pursuant to paragraph (2) of  
39 subdivision (a), of circumstances or allegations  
40 suggesting that an employee or agent of the department

1 may have engaged in or participated in criminal  
2 misconduct, the Attorney General shall have discretion to  
3 elect whether to assume responsibility for the  
4 investigation and prosecution of criminal cases involving  
5 employees or agents of the department that occur in  
6 facilities of the department or are related to conduct that  
7 is intended to or does occur in facilities of the department.  
8 The Attorney General's discretion under this paragraph  
9 shall be subject to a memorandum of understanding  
10 between the Attorney General and a district attorney.

11 (3) Nothing in this subdivision is intended to preclude  
12 a district attorney or sheriff from investigating or  
13 prosecuting any matter involving an employee or agent  
14 of the department when it is not being investigated or  
15 prosecuted by the Attorney General. Nor is anything in  
16 this subdivision intended to preclude the Attorney  
17 General from investigating or prosecuting any matter  
18 involving an employee or agent of the department within  
19 any county where a district attorney has primary  
20 prosecutorial responsibility but elects not to file charges  
21 or fails to make a charging decision within a reasonable  
22 time.

23 (d) In addition to the immediate notification  
24 requirements set out in subdivision (a), the department  
25 shall, within 24 hours, provide the Attorney General and  
26 district attorney responsible for primary prosecutorial  
27 responsibilities with all known facts and circumstances in  
28 a manner and form specified by the Attorney General.  
29 The Attorney General or district attorney conducting or  
30 directing a criminal investigation shall have unlimited  
31 access to any and all areas within the institutional  
32 premises as well as to departmental staff, records, and  
33 evidence.

34 (e) The reports to district attorneys and the Attorney  
35 General required by this section shall be confidential and  
36 may not be used in any civil or criminal proceeding  
37 except as mandated by *Brady v. Maryland* (1963) 373 U.S.  
38 83, Section 1043 of the Evidence Code, Section 832.7 of the  
39 Penal Code, or for purposes of criminal investigations or

1 *proceedings concerning the conduct of employees or*  
2 *agents of the department.*

3 *(f) It is the intent of the Legislature that the*  
4 *Department of Justice avoid any conflict of interest in*  
5 *representing the State of California in any civil litigation*  
6 *that may arise in a case in which an investigation has been*  
7 *or is currently being conducted by the Bureau of*  
8 *Investigation by contracting when necessary for private*  
9 *counsel.*

10 ~~amended to read:~~

11 ~~6129. (a) Any state employee at any rank and file,~~  
12 ~~supervisory, or managerial level who intentionally~~  
13 ~~engages in acts of reprisal, retaliation, threats, coercion,~~  
14 ~~or similar acts against an employee of either department~~  
15 ~~for having disclosed what the employee, in good faith,~~  
16 ~~believed to be improper activities shall be disciplined by~~  
17 ~~adverse action as provided in Section 19572 of the~~  
18 ~~Government Code. If no adverse action is instituted by~~  
19 ~~the appointing power, the State Personnel Board shall~~  
20 ~~invoke adverse action as provided in Section 19583.5 of~~  
21 ~~the Government Code.~~

22 ~~(b) In addition to all other penalties provided by law,~~  
23 ~~any state employee at any rank and file, supervisory, or~~  
24 ~~managerial level who intentionally engages in acts of~~  
25 ~~reprisal, retaliation, threats, coercion, or similar acts~~  
26 ~~against an employee of either department for having~~  
27 ~~disclosed what the employee, in good faith, believed to be~~  
28 ~~improper activities shall be liable in an action for damages~~  
29 ~~brought against him or her by the injured party. Punitive~~  
30 ~~damages may be awarded by the court if the acts of the~~  
31 ~~offending party are proven to be malicious. If liability has~~  
32 ~~been established, the injured party also shall be entitled~~  
33 ~~to reasonable attorney's fees as provided by law.~~

34 ~~SEC. 2. Section 6129.5 is added to the Penal Code, to~~  
35 ~~read:~~

36 ~~6129.5. (a) The Inspector General, the Youth and~~  
37 ~~Adult Correctional Agency, the Department of the Youth~~  
38 ~~Authority, the Department of Corrections, the Board of~~  
39 ~~Corrections, the Youthful Offender Parole Board, and the~~  
40 ~~Board of Prison Terms shall refer matters involving~~

1 ~~criminal conduct to the proper law enforcement~~  
2 ~~authorities.~~

3 ~~(b) Upon the occurrence or discovery of a major~~  
4 ~~incident within a Department of Corrections facility, the~~  
5 ~~supervisor who is present at the scene shall immediately~~  
6 ~~notify the department's Office of Internal Affairs. Upon~~  
7 ~~that notification, the Office of Internal Affairs shall~~  
8 ~~immediately notify the Attorney General who may~~  
9 ~~initiate an investigation by the Department of Justice. As~~  
10 ~~used in this section, major incidents include, but are not~~  
11 ~~limited to, any of the following:~~

12 ~~(1) Use of deadly force.~~

13 ~~(2) Use of force resulting in death or serious injury.~~

14 ~~(3) Suicide or attempted suicide.~~

15 ~~(4) Unattended death.~~

16 ~~(5) Allegation of sexual assault.~~

17 ~~(c) Upon inception of any criminal investigation~~  
18 ~~involving an employee of the Department of Corrections~~  
19 ~~or an agent thereof as a suspect, a representative from the~~  
20 ~~department shall immediately notify the Attorney~~  
21 ~~General. The notice shall be given regardless of whether~~  
22 ~~a local district attorney has also been notified of the~~  
23 ~~investigation. The Attorney General shall have the~~  
24 ~~discretion to elect whether to assume responsibility for~~  
25 ~~the investigation and prosecution of criminal cases~~  
26 ~~involving employees or agents of the department. If the~~  
27 ~~Attorney General elects not to assume responsibility for~~  
28 ~~investigation and prosecution of a case involving a~~  
29 ~~department employee or agent, the local district attorney~~  
30 ~~shall be responsible for investigation and, when~~  
31 ~~appropriate, prosecution of the case. Nothing in this~~  
32 ~~section shall preclude a local district attorney or other law~~  
33 ~~enforcement agency from investigating or prosecuting~~  
34 ~~any matter involving an employee or agent of the~~  
35 ~~department when the matter is not being investigated or~~  
36 ~~prosecuted by the Attorney General.~~

37 ~~(d) It is the intent of the Legislature that the~~  
38 ~~Department of Justice avoid any conflict of interest in~~  
39 ~~representing the State of California in any civil litigation~~  
40 ~~that may arise in a case in which an investigation has been~~



1 ~~or is currently being conducted by the department's~~  
2 ~~Bureau of Investigation by contracting when necessary~~  
3 ~~for private counsel.~~

4 ~~SEC. 3. No reimbursement is required by this act~~  
5 ~~pursuant to Section 6 of Article XIII B of the California~~  
6 ~~Constitution because the only costs that may be incurred~~  
7 ~~by a local agency or school district will be incurred~~  
8 ~~because this act creates a new crime or infraction,~~  
9 ~~eliminates a crime or infraction, or changes the penalty~~  
10 ~~for a crime or infraction, within the meaning of Section~~  
11 ~~17556 of the Government Code, or changes the definition~~  
12 ~~of a crime within the meaning of Section 6 of Article~~  
13 ~~XIII B of the California Constitution.~~

14 ~~SEC. 4. This act is an urgency statute necessary for the~~  
15 ~~immediate preservation of the public peace, health, or~~  
16 ~~safety within the meaning of Article IV of the~~  
17 ~~Constitution and shall go into immediate effect. The facts~~  
18 ~~constituting the necessity are:~~

19 ~~In order for the Department of Justice to immediately~~  
20 ~~investigate major incidents within correctional facilities,~~  
21 ~~it is necessary that this act take effect immediately.~~

